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July 31, 2024

VIA ECF (FILED UNDER SEAL)

Honorable Tonianne J. Bongiovanni, U.S.M.J.
United States District Court
District of New Jersey
Clarkson S. Fisher Building & U.S. Courthouse
402 East State Street
Trenton, New Jersey 08608

Re: *Arbutus Pharma Corp., et al. v. Pfizer Inc., et al.*
Civil Action No. 23-1876 (ZNQ) (TJB)

Dear Judge Bongiovanni:

Consistent with the Court's guidance during the July 2, 2024 discovery conference, we write on behalf of Defendants BioNTech SE ("BioNTech") and Pfizer Inc. ("Pfizer," and collectively with BioNTech, "Defendants") to submit the following update on remaining discovery disputes.

Defendants are filing this letter unilaterally because Plaintiffs Arbutus Biopharma Corp. and Genevant Sciences GmbH (collectively, "Plaintiffs") have declined to work with Defendants on preparing a joint letter to identify the parties' respective positions in a single submission. Defendants reached out to Plaintiffs regarding a single submission and provided Plaintiffs with a draft letter from all parties. Plaintiffs declined to join the submission, stating they would submit their own status update. Plaintiffs have not provided Defendants with a draft of the letter they intend to submit.

1. ESI Search Terms

The parties have been working amicably to negotiate ESI search terms and work towards the September 20, 2024 deadline for substantial completion of document production. On Friday, July 26, 2024, the parties reached agreement on the terms to be applied to BioNTech's ESI. The parties are nearing agreement on the terms to be applied to Plaintiffs' ESI—on Friday, July 26, 2024, Plaintiffs provided a counterproposal which Defendants are evaluating. Pfizer had already confirmed agreement on search terms for Pfizer's ESI on June 13, 2024.

2. Batch Records and Samples

Pursuant to the Court's July 12, 2024 Letter Order, [REDACTED]

[REDACTED] (ECF. No. 107 at page 2, paragraph 1.) Defendants [REDACTED]

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(*Id.*, page 3, paragraph 3.)

(*Id.*)

(*Id.*, page 3, paragraph 4.)

3. Defendants' Requests for Plaintiffs' Documents Concerning Lipids or LNP Formulations

Defendants propounded a number of discovery requests directed to Plaintiffs' R&D efforts, clinical and pre-clinical testing, and vaccine development that concern lipids or LNP formulations for use with any "nucleic acid-lipid particle," because the claims, which are not limited to mRNA, broadly cover any nucleic acid including DNA and RNA. (ECF. No. 79 at pages 3-9.) To be clear, Defendants are not seeking documents that relate *solely to nucleic acids*, but are seeking documents concerning *any LNP formulations* within the scope of any asserted claim. Plaintiffs, however, continue to refuse to produce these relevant and responsive categories of documents:

- R&D efforts concerning lipids or LNP formulations within the scope of the asserted claims;
- Preclinical and clinical testing of lipids or LNP formulations within the scope of the asserted claims; and
- Efforts to develop a SARS-COV-2 vaccine.

(*Id.*) The parties are continuing to meet and confer, and Defendants hope that this dispute can be resolved without the Court's assistance.

4. Defendants' Requests for Documents from the Moderna Litigation

Defendants requested documents produced by Plaintiffs in their suit against Moderna, *Arbutus Biopharma Corp. v. Moderna Inc.*, No. 22-252 (D. Del.), which involves three of the same patents-in-suit, as well as three additional family members to the patents-in-suit. (ECF. No. 79 at pages 2-3.) Plaintiffs, however, have refused to produce documents such as contentions, expert reports, deposition transcripts of Plaintiffs' witnesses, and responses to discovery requests. (*Id.*) The parties are continuing to meet and confer, and Defendants hope that this dispute can be resolved without the Court's assistance.

We thank the Court for its continued attention to this matter and remain available at the Court's convenience to address any questions or concerns.

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Respectfully submitted,

s/ William P. Deni, Jr.
William P. Deni, Jr.

cc: All counsel of record (via email)